IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2689 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT WATER SUPPLY & SEWERAGE BOARDE

Versus

CHANDUBHAI MANABHAI GARASIA

Appearance:

1. Special Civil Application No. 2689 of 1995

MR KH BAXI for Petitioner No. 1

MR JS BRAHMBHATT for Respondent No. 1

NOTICE SERVED for Respondent No. 1

..... for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/04/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Baxi for the

petitioner and Mr. Brahmbhatt for the respondent No.1. No one has remained present for the Godhra Nagarpalika but nobody has remained present for and on behalf of respondent No.2 Godhra Nagarpalika. Therefore, this matter has been taken up for hearing in absence of respondent No.2.

By way of this petition, the petitioner has challenged the award made by the Labour Court, Godhra in Reference NO. 314 of 1992 dated 31st December, 1994 wherein the labour court has granted reinstatement with full back wages for interim period. Petitioner as well as respondent No.2 both were held liable jointly and severally for reinstatement of the respondent No.1 with full back wages and first responsibility in that regard was held to be that of respondent No.2 Godhra Municipality and in case if Godhra Nagarpalika fail to reinstate the respondent No.1 in service with full back wages, then, in that event, it was held that the petitioner will be responsible to reinstate the respondent No.1 in service as directed by the labour court. Respondent No.1 has filed affidavit in reply to the present petition.

In this petition, initially, this Court has directed the petitioner to deposit the amount for a period 27th September, 1988 till 2nd December, 1993 before this Court. This order was made by this Court on 4.4.1995. Thereafter, following order was passed by this Court on 21.6.1996 while admitting this petition :

"Rule. Mr. Brahmbhatt waives service of the rule on behalf of respondent NO. 1. No one has appeared on behalf of the Godhra Nagarpalika despite service of the notice. Hence the notice of rule may be issued to Godhra Nagarpalika.

Mr. Baxi has pointed out that the Gujarat Water Supply and Sewerage Board, Godhra has deposited a sum of Rs.29,455.80 ps. in this Court as directed by this Court. In the facts and circumstances of this case, since it is submitted on behalf of the Board that the entire Scheme has been handed over to Godhra Nagarpalika and the wages for the period prior to that date has been deposited and now the Scheme in which the respondent has been appointed is no more with the petitioner board, at this stage, no order with regard to relief of reinstatement can be passed but it is directed that the respondent workman may withdraw the amount of Rs.29,544.80 ps.

which has been deposited by the Board. If the petitioner succeeds in this petition, the appropriate orders with regard to the return of the amount shall be passed by this Court so as to reimburse the amount to the Board either from the concerned workman or from the Godhra Nagar Palika. The question with regard to further relief or otherwise shall be considered after the notice of rule is served upon Godhra Nagar Palika. Notice of the rule to the Godhra Nagarpalika is made returnable by 1st July, 1996. Direct Service is Permitted. "

During the course of hearing, learned advocate Mr. Baxi has submitted that actually, the scheme was prepared by the petitioner and for that, some maintenance work was necessary for which the respondent workman was engaged as daily rated employee and as and when the work was available with the petitioner, same was being provided to the respondent workman and after the work was over at a particular place, work at some other place was being provided to the respondent workman but the respondent workman has not been reporting at such other place and that is how the respondent workman has remained absent and thereby has abandoned the work. According to him, the services of the respondent workman were not terminated by the petitioner board as alleged and, therefore, the labour court has erred in coming to the conclusion that the services of the respondent workman were terminated. According to him, the labour court ought to have held that the respondent workman has left the work at his own. He has submitted that the labour court has committed error in coming to the conclusion that the respondent workman has completed 240 days continuous work and the petitioner board has committed breach of the mandatory provisions of section 25-F of the Industrial Disputes Act, 1947 and, therefore, the award in question is required to be quashed and set aside in so far as it is relating to grant of back wages for a period from 27th September, 1988 to 1st December, 1993 upto the date when the scheme was handed over to respondent No.2. He has submitted that the scheme which was initially prepared was subsequently handed over to Godhra Municipality and, therefore, in view of that fact, labour court ought to have rejected the reference qua petitioner board and ought to have passed the award in question only against the respondent NO.2. Thus, according to him, the labour court has erred in holding that if the Godhra Municipality fail to implement and execute the award in question, then, the petitioner will be liable for implement the award in question.

I have considered the submissions made by Mr.Baxi. According to the respondent workman, he was engaged by the petitioner on 20th September, 1988 and was receiving an amount of Rs.600.00 p.m. and his service was terminated on 13th February, 1990 and, therefore, that action of termination of his service was challenged by him by raising industrial dispute which was referred to the labour court concerned for adjudication on 26th May, 1992. Before the labour court, statement of claim was filed by the respondent workman at Exh. 3 wherein it was contended by the workman that he remained in service continuously for a period from 20th September, 1988 till 13th February, 1990 and was, therefore, entitled for the protection under section 25-F but he has been retrenched by the respondents without following the provisions under section 25F of the Industrial Disputes Act, 1947 and at the time of terminating his services, he has not been served with any notice or any notice pay in lieu of such notice. Against the said statement of claim, reply was filed by the petitioner before the labour court at Exh. 9 and the statements made by the workman in his statement of claim were disputed by the petitioner and it was further contended that the work of pipeline under the Godhra Water Supply Scheme had commenced in July, 1988 and for the work of line testing and for the requirement of repairing of the pipeline, daily rated labours were required and, therefore, the respondent workman was engaged on daily rated basis as a labour. That work had been completed in March, 1989 and thereafter, the workman was offered work at another place but he had not resumed at another place. It was also contended by the petitioner Board that the works in force under the petitioner board were to be handed over to the respondent No.2 and office of the petitioner board was to be closed and therefore, there is no question of giving back wages to the workman or to reinstate him in service. It has also been submitted by the petitioner board before the labour court that the workman has not completed 240 days of work and, therefore, he is not entitled for the relief as prayed for.

Thereafter, before the labour court, respondent filed affidavit at Exh. 10 in support of the statement of claim filed by the respondent workman. This affidavit filed by the workman had remained unchallenged because evidence of the workman was not cross examined by the petitioner or respondent No.2. Not only that but no oral evidence has been led before the labour court by the petitioner to substantiate the averments made by it in its written statement filed before the labour court and,

therefore, before the labour court, there was only statement of claim of the workman and reply thereto by the petitioner board and then the affidavit of the workman contents of which were not challenged by the petitioner by way of cross examination of the workman or by filing affidavit controverting such statements made by the workman in his affidavit at Exh. 10. Therefore, the labour court, after considering the evidence before it, passed the award in question. During the pendency of the reference before the labour court, respondent workman submitted an application that now the scheme has been transferred to Godhra Nagarpalika vide Exh.15 and, therefore, it was prayed by the workman for joining Godhra Nagarpalika as party to the said reference. Thereafter, that prayer was allowed and Godhra Nagarpalika was ordered to be joined as first party No.2 to the proceedings before the labour court. The respondent no.2 has not filed any written statement, statement of defence and it was not represented by anybody before the labour court. Before the labour court, the petitioner was also remaining absent and except the written statement, no other evidence was led or produced by the petitioner and, therefore, in absence of that, ultimately, the labour court was having no other option but to proceed with the matter after considering the statement of claim filed by the workman as supported by the affidavit Exh. 10 and reply thereto filed by the petitioner board which was not supported or substantiated by any other evidence.

The labour court considered the evidence before it and it came to the conclusion that there is no rebuttal evidence produced either by the petitioner or by the respondent No. 2 and, therefore, the labour court after considering the evidence before it, come to the conclusion that the workman concerned has continuously worked with the petitioner from 27th September, 1988 to 13th February, 1990 and has completed 240 days continuous service at the time of termination of his service and, therefore, the action of termination of his service was against the provisions of section 25F of the Industrial Disputes Act and, therefore, on that ground, the labour court quashed and set aside the order of termination and directed reinstatement. The labour court also considered the averments of the workman that he has not been gainfully employed elsewhere and has further observed that these averments made by the workman on oath were not controverted by the first party and, therefore, the labour court made the award of reinstatement in service with back wages as aforesaid which is under challenge before this this Court by the petitioner board.

I have considered the award in question. Factual aspects of the matter have not been disputed by the respondent No.2 Godhra Nagarpalika either before the labour court or before this Court. Further, this Court is also considering the fact that the petitioner has already deposited an amount of Rs.29,455.80 before this Court towards the back wages for a period from 27th September, 1988 till 1st December, 1993 which, according to this Court's view, is satisfying the responsibility accrued against the petitioner board and on and from 1st December, 1993 when the scheme has been handed over by agreement to the respondent NO 2, respondent No.2 is responsible for implementation and execution of the award in question. Therefore, according to my opinion, after 1st December, 1993, in view of the fact that the amount of the award for the period from 27th September, 1988 to 1st December, 1993 has been deposited by the petitioner and the same has been withdrawn by the workman concerned and, therefore, now there is no responsibility of the petitioner board to implement the award in question and now it is the respondent No.2 Godhra Municipality which is responsible to implement the award in question for the period from 1st December, 1993.

I have perused the entire award made by the labour court. The labour court was right in considering the statement of claim as supported by the affidavit Exh. 10 filed by the workman as there was no evidence produced before it either by the petitioner or by respondent NO.2 and, therefore, the labour court has not committed any error in passing the award in question. Learned advocate Mr. Baxi has not been able to point out any jurisdictional error and/or procedural irregularity committed by the labour court in passing the award in question which would require interference of this court in exercise of the powers under Article 226 and/or 227 of the Constitution of India save and except the one modification that the award in question is now required to be implemented by the respondent No. 2 Godhra Municipality and not by the petitioner Board and with clarification that the award in question has been satisfied by the petitioner Board by making deposit of Rs.29,455.80 ps. for the period from 27.9.1988 to 1.12.1993.

Accordingly, award in question passed by the labour court, Godhra in Reference NO. 314 of 1992 dated 31st December, 1994 is modified to the effect that now there is no responsibility of the petitioner board to implement the award in question and now only respondent

NO.2 Nagarpalika is responsible for implementation of the award in question. Accordingly rule is made absolute in terms indicated hereinabove with no order as to costs.

Dt. 3.4.2002. (H.K. Rathod,J.)

Vyas